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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

DECLARATION OF LUKE COLE
IN PLAINTIFFS' EMERGENCY
MOTION FOR PROTECTIVE
ORDER

I, Luke W. Cole, declare:

1. I am over 18 years of age and not a party to this action. I am lead counsel for plaintiffs and led the negotiating team for plaintiffs in achieving settlement in this case. I was involved in every negotiation and have ultimate responsibility to the plaintiffs for the negotiations.

DECLARATION OF LUKE COLE IN SUPPORT
OF PLAINTIFFS' EMERGENCY MOTION FOR
PROTECTIVE ORDER

1 Approximately 45 minutes ago, plaintiffs counsel became aware of a filing by defendant Teck
2 Cominco that plaintiffs believe is a serious breach of the confidentiality of settlement
3 negotiations and defendant's counsel's ethical obligations.

4 2. The dispute in this case is only about the Consent Decree. The disclosure of other
5 terms and conditions of the settlement agreement is wholly unnecessary and verges on bad faith
6 behavior by defendant's counsel. The disclosure of plaintiffs' settlement positions is necessarily
7 prejudicial to the plaintiffs.

8 3. Allowing the public – including the press, which has been closely following this
9 dispute, apparently through PACER¹ – access to the plaintiffs' internal communications with the
10 mediator, as well as versions of the Settlement Agreement that were later superseded, is
11 prejudicial to the plaintiffs, is unnecessary for the resolution of the current dispute before this
12 Court, and can only have been done to create mischief by Teck Cominco.

13 4. The harm to the plaintiffs of having their internal deliberations published for anyone to
14 read – particularly in the close-knit community of Kivalina – is considerable.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th
16 day of August at San Francisco, California.

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18 /S/ Luke Cole

19 Luke Cole
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26 ¹See, e.g., Tony Hopfinger and Joe Schneider, "Teck Cominco proposes \$120 million
27 pipeline to end Alaska suit," Bloomberg.com (August 2, 2008) (quoting Teck Cominco's court
filing of the previous day).

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August 2008, a true and correct copy of the foregoing Plaintiffs' Declaration of Luke Cole in Support of Emergency Motion for Protective Order was served, via the Court's electronic mail distribution system, on the below identified counsel of record:

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/S/ Luke Cole

Luke Cole

DECLARATION OF LUKE COLE IN SUPPORT
OF PLAINTIFFS' EMERGENCY MOTION FOR
PROTECTIVE ORDER